IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 139 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DEVARSONS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 139 of 1989

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr BB Naik learned counsel for the revenue makes a specific request that since this reference is pending for last about 12 years and more particularly, since the controversy raised in this reference is concluded by a retrospective legislative amendment, this Bench may take up this reference for final disposal, notwithstanding the fact that one of us (Shri D.A. Mehta,J) had appeared for the respondent-assessee at the hearing of the reference application before the Income Tax Appellate Tribunal.

In view of the above request, we take up this reference for final disposal.

2. In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1983-84:-

"Whether, in law and on facts, the Tribunal is right in holding that export cash assistance received by the assessee company during the year was not taxable and was exempt as capital receipt?"

3. We have heard Mr BB Naik learned counsel for the revenue and Mr RK Patel learned counsel for the assessee.

4. For holding that export cash assistance received by the assessee company during the year was not taxable and was exempt as capital receipt, the Tribunal had relied on the decision of the Special Bench of the Income Tax Appellate Tribunal, Delhi in the case of Gadore Tools (India) (P) Ltd. vs. IAC, 25 ITD 193. However, to overcome the effect of the said decision, the Legislature amended the provisions of section 2 (24) and 28 (iiib) of the Act by providing that cash assistance (by whatever name called) received or receivable by any person against export under any scheme of Government of India shall be chargeable to income-tax under the head "Profits and gains of business or profession" and that such assistance shall be included in "income". The aforesaid legislative amendment was made w.e.f. 1-4-1967. The year under consideration is the assessment year 1983-84. Hence, in view of the aforesaid legislative amendment with retrospective effect, export cash assistance received by the assessee during the year under consideration was taxable as income and was not exempt as capital receipt.

Accordingly, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-